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PAUL REICHE III and ROBERT FREDERICK FORD

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

STARDOCK SYSTEMS, INC.,

Plaintiff,

v.

PAUL REICHE III and ROBERT  
FREDERICK FORD,

Defendants.

Case No. 4:17-CV-07025-SBA

**REICHE AND FORD'S OPPOSITION TO  
DEFENDANTS' EVIDENTIARY  
OBJECTIONS TO THE DECLARATION  
OF PAUL REICHE III IN SUPPORT OF  
STARDOCK'S MOTION FOR  
TEMPORARY RESTRAINING ORDER  
AND ORDER TO SHOW CAUSE WHY  
PRELIMINARY INJUNCTION SHOULD  
NOT BE GRANTED**

Judge: Hon. Sandra B. Armstrong

Complaint Filed: Dec. 8, 2017  
Trial Date: June 24, 2019

PAUL REICHE III and ROBERT  
FREDERICK FORD,

Counter-Claimants,

v.

STARDOCK SYSTEMS, INC.,

Counter-Defendant.

Defendants and Counter-Claimants Paul Reiche III and Robert Frederick Ford (“Reiche and Ford”) hereby oppose the objections submitted by Stardock Systems, Inc. (“Stardock”) to the Declaration of Paul Reiche III (“Reiche Decl.”) in Support of Reiche and Ford’s Opposition to Stardock’s *Ex Parte* Motion for Temporary Restraining Order and Order to Show Cause Why Preliminary Injunction Should Not Be Granted (“Stardock’s Objections”). The Reiche Decl. is not objectionable and should be considered by this Court in its determination of Stardock’s Motion.

The statements in the Reiche Decl. are entirely within the personal knowledge of Paul Reiche III and the foundation for the statements made therein is Reiche’s own personal knowledge. Stardock’s objections to this evidence are ill-founded, especially given Stardock’s CEO’s own admission that Reiche and Ford are the original creators of Star Control I and II and thus the *only* parties with personal knowledge of the creation thereof. [Dkt 64-1, Ex. 9].

	<u><b>Objectionable Evidence</b></u>	<u><b>Grounds for Objection</b></u>	<u><b>Response</b></u>
1.	<p>“In the Summer of 1988, I created the concept for the Star Control computer game and made a proposal to develop it to multiple video game publishing companies, including Accolade.”</p> <p>Reiche Decl., p. 2, ¶ 2, lines 5-7</p>	<p><u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement that he “created the concept for the Star Control computer game,” or that he made development proposals to “multiple video game publishing companies.”</p> <p><u>FRE 1002</u> Furthermore, the declarant has failed to include the proposal documents required by the “best evidence” rule to prove that these development proposals took place.</p>	<p>FRE 901 concerns the authentication of “an <i>item</i> of evidence” (e.g. documentary evidence) and is thus inapplicable to witness testimony. FRE 901 (emphasis added). Regardless, Reiche’s own personal knowledge is the foundation for this statement and Stardock has not objected that the statement lacks personal knowledge.</p> <p>Under FRE 1002, “[a]pplication of the rule requires a resolution of the question whether contents are sought to be proved. Thus an event may be proved by nondocumentary evidence, even though a written record of it was made. If, however, the event is sought to be</p>

			proved by the written record, the rule applies. For example, payment may be proved without producing the written receipt which was given. Earnings may be proved without producing books of account in which they are entered.” FRE 1002 Committee Notes, citing McCormick §198; 4 Wigmore §1245. Reiche’s testimony as to the fact that he created a proposal to present to video game companies does not require documentary evidence as Reiche’s statement does not speak to the <i>content</i> of the proposal, just that one was created.
2.	<p>“This mode of gameplay was unique when we created and released <i>Star Control</i>, as far as I recall.”</p> <p>Reiche Decl., p. 2, ¶ 5, lines 27-28</p>	<p><u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement that the mode of gameplay was unique at the time <i>Star Control</i> was created.</p> <p><u>FRE 602</u> <u>Speculation</u> The declarant lacks personal knowledge and is speculating as to whether any other games had similar modes of gameplay at the time <i>Star Control</i> was released.</p>	<p>FRE 901 concerns the authentication of “an <i>item</i> of evidence” (e.g. documentary evidence) and is thus inapplicable to witness testimony. FRE 901 (emphasis added). Regardless, Reiche’s own personal knowledge is the foundation for this statement.</p> <p>Under FRE 602, “[e]vidence to prove personal knowledge may consist of the witness’s own testimony.” Reiche’s testimony, as the creator of <i>Star Control</i> and its mode of gameplay, is sufficient to demonstrate his personal knowledge of its uniqueness.</p>
3.	<p>“Each of the alien species has a unique name, appearance, ship(s), weapons, backstory, and conversational style.”</p>	<p><u>FRE 901</u> The declarant has failed to provide the foundation</p>	<p>FRE 901 concerns the authentication of “an <i>item</i> of evidence” (e.g. documentary evidence) and is thus</p>

1			required to support his statement.	inapplicable to witness testimony. FRE 901 (emphasis added). Regardless, Reiche's own personal knowledge is the foundation for this statement and Stardock has not objected that the statement lacks personal knowledge.
2		Reiche Decl., p. 3, ¶ 7, lines 7-8		
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7	4.	"As far as I know, no other game had a screen display, layout, and functionality like this before, or since (except for Stardock's <i>Origins</i> beta initially called "Super Melee" and then "Fleet Battles" as discussed below)."	<u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement.	FRE 901 concerns the authentication of "an <i>item</i> of evidence" (e.g. documentary evidence) and is thus inapplicable to witness testimony. FRE 901 (emphasis added). Regardless, Reiche's own personal knowledge is the foundation for this statement.
8			<u>FRE 602</u> <u>Speculation</u> The declarant lacks personal knowledge and is speculating as to whether any other games had similar screen display, layout, and functionality similar to <i>Star Control</i>	Under FRE 602, "[e]vidence to prove personal knowledge may consist of the witness's own testimony." Reiche's testimony, as the creator of Star Control and its screen display, layout and functionality, is sufficient to demonstrate his personal knowledge of its uniqueness.
9		Reiche Decl., p. 4, ¶ 9, lines 12-14		
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19	5.	"Fred and I were the primary authors of most of the creative materials incorporated into both <i>Star Control I and II</i> , including the game design, story, art, sound effects, software code, and other materials.	<u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement	FRE 901 concerns the authentication of "an <i>item</i> of evidence" (e.g. documentary evidence) and is thus inapplicable to witness testimony. FRE 901 (emphasis added). Regardless, Reiche's own personal knowledge is the foundation for this statement and Stardock has not objected that the statement lacks personal knowledge.
20		Reiche Decl., p. 4, ¶ 11, lines 17-19		
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27	6.	". . . I personally created the names, initial concepts, written	<u>FRE 901</u>	FRE 901 concerns the authentication of "an <i>item</i> of
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1		descriptions, and sketches of every character in the games, as well as their history, physical and cultural details, and conversation design and text specifications. I also wrote a majority of the dialogue for the characters, and illustrated a majority of the ships, among other things.”	The declarant has failed to provide the foundation required to support his statement that he actually created any of the elements contained in this statement.	evidence” (e.g. documentary evidence) and is thus inapplicable to witness testimony. FRE 901 (emphasis added). Regardless, Reiche’s own personal knowledge is the foundation for this statement and Stardock has not objected that the statement lacks personal knowledge.
2		Reiche Decl., p. 4, ¶ 12, lines 20-24		
3	7.	“In addition to co-leading the development of the games with me and acting as one of the producers, Fred personally wrote all of the code for both <i>Star Control I and II</i> , as far as we can recall.”	<u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement.	FRE 901 concerns the authentication of “an <i>item</i> of evidence” (e.g. documentary evidence) and is thus inapplicable to witness testimony. FRE 901 (emphasis added). Regardless, Reiche’s own personal knowledge is the foundation for this statement and Stardock has not objected that the statement lacks personal knowledge.
4		Reiche Decl., p. 4, ¶ 13, lines 25-27	<u>Speculation</u> The declarant is speculating as to the role that Fred had in the development of Star Control I and II, as evidenced by the statement “as far as we can recall.”	The role that Fred played in the development of Star Control I and II is well within Reiche’s personal knowledge and is not speculative.
5	8.	“To the best of my recollection, everyone who contributed creative content to the games agreed to assign any copyrights to their material to Fred and me at that time, and have since signed written agreements confirming this.”	<u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement that other individuals who worked on the Star Control computer game agreed to assign their copyrights.	FRE 901 concerns the authentication of “an <i>item</i> of evidence” (e.g. documentary evidence) and is thus inapplicable to witness testimony. FRE 901 (emphasis added). Regardless, Reiche’s own personal knowledge is the foundation for this statement and Stardock has not objected that the statement lacks personal knowledge.
6		Reiche Decl., p. 5, ¶ 14, lines 4-6	<u>Speculation</u> The declarant is speculating as to whether	

1		other contributors in the development of Star Control I and II agreed to assign copyrights to Fred and the declarant, as evidenced by the statement “[t]o the best of my recollection . . .”	The scope of involvement of third parties in the development of Star Control I and II is well within Reiche’s personal knowledge and is not speculative.
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6		<u>FRE 1002</u>	Under FRE 1002,
7		Furthermore, the declarant has failed to include the assignment documents required by the “best evidence” rule to prove that these assignments actually took place.	“[a]pplication of the rule requires a resolution of the question whether contents are sought to be proved. Thus an event may be proved by nondocumentary evidence, even though a written record of it was made. If, however, the event is sought to be proved by the written record, the rule applies. For example, payment may be proved without producing the written receipt which was given. Earnings may be proved without producing books of account in which they are entered.” FRE 1002
8			Committee Notes, citing McCormick §198; 4
9			Wigmore §1245. Reiche’s testimony as to the scope of involvement of third parties in the development of Star Control I and II does not require documentary evidence as Reiche’s statement does not speak to the <i>content</i> of the assignment of those parties’ rights (to the extent they existed), just that they occurred.
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25	9.	“Thus, aside from a small amount of music in <i>Star Control II</i> which we licensed, all copyrights to <i>Star Control I</i> and	Under FRE 602, “[e]vidence to prove personal knowledge may consist of the witness’s own testimony.”
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27		<u>FRE 602</u> <u>FRE 701</u> The declarant lacks the personal knowledge necessary to make this	
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<p><i>II</i> are and have always been owned by Fred and me.</p> <p>Reiche Decl., p. 5, ¶ 15, lines 7-8</p>	<p>statement, as he does not have the expertise necessary to provide opinion as to whether he owns “all copyrights to <i>Star Control I and II</i>.” As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702.</p> <p><u>FRE 1002</u></p> <p>Furthermore, the declarant has failed to include the copyright ownership documents required by the “best evidence” rule to prove ownership.</p>	<p>Under FRE 701, a witness may testify as to an opinion that is rationally based on the witness’s perception. FRE 702. <i>See, e.g. Medforms, Inc. v. Healthcare Management Solutions, Inc.</i>, 290 F.3d 98, 110–11 (2d Cir.2002) (permitted testimony of computer programmer regarding terms contained in copyright registration “based on his everyday experience as a computer programmer and specifically on his work on [the copyrighted software].”).</p> <p>Reiche’s testimony, as the creator of <i>Star Control I and II</i>, is sufficient to demonstrate his personal knowledge as to the scope of the copyrights he and Fred own and such testimony is rationally based on Reiche’s perception.</p> <p>Under FRE 1002, “[a]pplication of the rule requires a resolution of the question whether contents are sought to be proved. Thus an event may be proved by nondocumentary evidence, even though a written record of it was made. If, however, the event is sought to be proved by the written record, the rule applies. For example, payment may be proved without producing the written receipt which was given. Earnings may be proved without producing books of account in which they are entered.” FRE 1002 Committee Notes, citing McCormick §198; 4</p>
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1			Wigmore §1245. Reiche’s testimony as to the fact that he created and owns copyrights to Star Control I and II does not require documentary evidence—indeed, a registered copyright is not required to establish copyright ownership. Moreover, the copyright registrations themselves are attached to the Reiche Decl. as Exhibits 3-4.
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9	10.	“Fred and I later obtained U.S. Copyright Registration No. PA 2-071-496 for the work titled ‘Star Control II,’ which covers all computer program code for that game, and U.S. Copyright Registration No. PA 2-107-340 for the work titled ‘Star Control II,’ which covers all of the audiovisual and written content in the game . . .”	<u>FRE 602</u> <u>FRE 701</u> The declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as to what the alleged copyrights do or do not cover. As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702.
10		Reiche Decl., p. 5, ¶ 19, lines 21-24	Under FRE 602, “[e]vidence to prove personal knowledge may consist of the witness’s own testimony.” Under FRE 701, a witness may testify as to an opinion that is rationally based on the witness’s perception. FRE 702. <i>See, e.g. Medforms, Inc. v. Healthcare Management Solutions, Inc.</i> , 290 F.3d 98, 110–11 (2d Cir.2002) (permitted testimony of computer programmer regarding terms contained in copyright registration “based on his everyday experience as a computer programmer and specifically on his work on [the copyrighted software].”).
11			Reiche’s testimony, as the creator of Star Control I and II, is sufficient to demonstrate his personal knowledge as to the scope of the copyrights he and Fred own and such testimony is rationally based on Reiche’s perception. Moreover, the copyright registrations themselves are attached to the Reiche Decl. as Exhibits 3-4.
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11.	<p>“<i>Star Control 3</i> was not as well-received as <i>Star Control I</i> and <i>II</i>.”</p> <p>Reiche Decl., p. 6, ¶ 20, lines 6-7</p>	<p><u>FRE 602</u> The declarant lacks the personal knowledge necessary to make this statement.</p> <p><u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement that <i>Star Control 3</i> was not as well-received as <i>Star Control I</i> and <i>II</i>.</p>	<p>Under FRE 602, “[e]vidence to prove personal knowledge may consist of the witness’s own testimony.” Reiche’s testimony is sufficient to demonstrate his personal knowledge of the success of <i>Star Control 3</i>.</p> <p>FRE 901 concerns the authentication of “an <i>item</i> of evidence” (e.g. documentary evidence) and is thus inapplicable to witness testimony. FRE 901 (emphasis added). Regardless, Reiche’s own personal knowledge is the foundation for this statement.</p>
12.	<p>“Accolade offered to purchase all rights to <i>Star Control I</i> and <i>II</i> and any other <i>Star Control</i> products from me. Accolade acknowledged that Fred and I created and owned <i>Star Control</i>, including ‘its themes, settings, plot lines, characters, its ‘essence’ as entity unique from any other science-fiction game,’ and that <i>Star Control 3</i> was created only with Fred’s and my permission under agreements with Accolade.”</p> <p>Reiche Decl., p. 6, ¶ 22, lines 11-15</p>	<p><u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement that Accolade offered to purchase rights to <i>Star Control</i>, and that it acknowledged that the declarant was the owner of those rights.</p> <p><u>FRE 801, 802</u> Furthermore, the statements allegedly made by Accolade are extrajudicial statements being offered for their truth, and as such they are inadmissible hearsay without exception.</p> <p><u>FRE 1002</u> Finally, the declarant has failed to include the documents required by the “best evidence” rule to prove that Accolade</p>	<p>FRE 901 concerns the authentication of “an <i>item</i> of evidence” (e.g. documentary evidence) and is thus inapplicable to witness testimony. FRE 901 (emphasis added). Regardless, Reiche’s own personal knowledge is the foundation for this statement and Stardock has not objected that the statement lacks personal knowledge.</p> <p>The statements made by Accolade are not hearsay because they are not offered for their truth. Instead, Reiche and Ford offer these statements to show that, as the parties to the 1988 Agreement, Reiche and Ford and Accolade had the same understanding as to the subject matter of the 1988 Agreement—both at the time of contracting and at the time</p>

		did indeed make an offer to purchase any rights to the Star Control games.	<p>the statement was made. In addition, these statements are admissible under FRE 807.</p> <p>The documents containing the statements at issue are attached to the Reiche Decl. as Exhibit 6. Thus, Stardock’s FRE 1002 objection is unfounded.</p>
13.	<p>“In November 1997, Accolade asked instead for a perpetual exclusive license to the classic background material for <i>Star Control I and II</i> for use in a new Star Control game and potential future sequels. Accolade stated that ‘[c]urrently, Accolade owns the rights to the title Star Control, and [Reiche and Ford] own the rights to the classic background material created for Star Control and Star Control 2,’ and that ‘[Accolade] would like to unify the Star Control license . . .’”</p> <p>Reiche Decl., p. 6, ¶ 23, lines 17-22</p>	<p><u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement that Accolade wanted a perpetual license, and that it acknowledged that the declarant was the owner of those rights.</p> <p><u>FRE 801, 802</u> Furthermore, the statements allegedly made by Accolade are extrajudicial statements being offered for their truth, and as such they are inadmissible hearsay without exception.</p> <p><u>FRE 1002</u> Finally, the declarant has failed to include the documents required by the “best evidence” rule to prove that Accolade did indeed make an offer to purchase an exclusive license to the Star Control games.</p>	<p>FRE 901 concerns the authentication of “an <i>item</i> of evidence” (e.g. documentary evidence) and is thus inapplicable to witness testimony. FRE 901 (emphasis added). Regardless, Reiche’s own personal knowledge is the foundation for this statement and Stardock has not objected that the statement lacks personal knowledge.</p> <p>The statements made by Accolade are not hearsay because they are not offered for their truth. Instead, Reiche and Ford offer these statements to show that, as the parties to the 1988 Agreement, Reiche and Ford and Accolade had the same understanding as to the subject matter of the 1988 Agreement—both at the time of contracting and at the time the statement was made. In addition, these statements are admissible under FRE 807.</p> <p>Moreover, the documents containing the statements at issue are attached to the Reiche Decl. as Exhibit 6.</p>

1			Thus, Stardock's FRE 1002 objection is unfounded.
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3	14.	Accolade never paid me any advances or royalties under Addendum No. 3 after the initial advance in 1998 . . . Accolade also stopped paying royalties for sales of the Classic Star Control Games after 2000 at the latest, indicating that it had stopped selling them. "Thus, the 1988 License Agreement and Addenda Nos. 1-3 expired and terminated by April 1, 2001, and all copyrights to <i>Star Control I and II</i> and our materials used in <i>Star Control 3</i> reverted to Fred and me on or about April 1, 2001.	<p><u>FRE 901 Speculation</u> The declarant has failed to provide the foundation required to support his statement that Accolade did not make advances after 1998 or pay royalties after 2000, and is speculating as to whether Accolade did indeed stop selling Classic Star Control Games after 2000.</p> <p><u>FRE 602</u> <u>FRE 701</u> The declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as to when the License Agreement terminated, and whether "all copyrights to <i>Star Control I and II</i> and [the] materials used in <i>Star Control 3</i>" reverted to the declarant on or about April 1, 2001. As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702.</p>
4		Reiche Decl., p. 7, ¶ 27, lines 6-11	Under FRE 602, "[e]vidence to prove personal knowledge may consist of the witness's own testimony." Under FRE 701, a witness may testify as to an opinion that is rationally based on the witness's perception. FRE 702. <i>See, e.g. Medforms, Inc. v. Healthcare Management Solutions, Inc.</i> , 290 F.3d 98, 110–11 (2d Cir.2002) (permitted testimony of computer programmer regarding terms contained in copyright registration "based on his everyday experience as a computer programmer and specifically on his work on [the copyrighted software].").
5			Reiche's testimony, as a party to the 1988 Agreement, is sufficient to demonstrate his personal knowledge as to the scope of his rights under that agreement and such testimony is rationally based on Reiche's perception. Moreover, the 1988 Agreement itself attached to the Reiche Decl. as Exhibit 1.
6	15.	". . . Accolade indicated that it was no longer using the name	<p><u>FRE 901</u> The declarant has failed to provide the foundation</p>
7			FRE 901 concerns the authentication of "an <i>item</i> of evidence" (e.g. documentary

1 2 3 4 5 6 7 8 9 10 11 12	and had no plans to do so in the future.”  Reiche Decl., p. 7, ¶ 28, lines 15-16	required to support his statement that Accolade no longer intended to use the Star Control mark.  <u>FRE 801, 802</u> Furthermore, the statements allegedly made by Accolade are extrajudicial statements being offered for their truth, and as such they are inadmissible hearsay without exception.	evidence) and is thus inapplicable to witness testimony. FRE 901 (emphasis added). Regardless, Reiche’s own personal knowledge is the foundation for this statement and Stardock has not objected that the statement lacks personal knowledge.  This statement is admissible under FRE 807 because it has circumstantial guarantees of trustworthiness (namely, that Accolade did not, in fact, use the name in the future) and it is more probative than other available evidence.
13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	16. On or about April 1, 2011, Fred and I learned that a company called Good Old Games was selling <i>Star Control I and II</i> on its website, GOG.com . . . without our permission and in violation of our copyrights.  Reiche Decl., ¶ 32, p. 7 lines 27-28 to p. 8 line 1	<u>FRE 602</u> <u>FRE 701</u> The declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as to whether Good Old Games was violating any copyrights. As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702.	Under FRE 602, “[e]vidence to prove personal knowledge may consist of the witness’s own testimony.” Under FRE 701, a witness may testify as to an opinion that is rationally based on the witness’s perception. FRE 702. <i>See, e.g. Medforms, Inc. v. Healthcare Management Solutions, Inc.</i> , 290 F.3d 98, 110–11 (2d Cir.2002) (permitted testimony of computer programmer regarding terms contained in copyright registration “based on his everyday experience as a computer programmer and specifically on his work on [the copyrighted software].”).  Reiche’s testimony, as the creator of <i>Star Control I and II</i> , is sufficient to demonstrate his personal knowledge as to the scope of the copyrights he and Fred own and such

1			testimony is rationally based on Reiche's perception. Moreover, the copyright registrations themselves are attached to the Reiche Decl. as Exhibits 3-4.
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5	17.	<p>"On April 22, 2011, Fred and I notified Atari and GOG that we were the authors and owners of <i>Star Control I and II</i> and had not given permission for Atari to sell them. We reminded Atari that while Accolade once held the publishing rights, such rights expired long ago and that any purported agreement by Atari concerning our work violated our rights."</p> <p>Reiche Decl., p.8, ¶ 33, lines 4-8</p>	<p><u>FRE 602</u> <u>FRE 701</u></p> <p>The declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as to whether he owned Star Control I and II, whether Accolade's publishing rights had expired, and whether Atari had the right to sell any of the Star Control games. As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702.</p> <p>Under FRE 602, "[e]vidence to prove personal knowledge may consist of the witness's own testimony." Under FRE 701, a witness may testify as to an opinion that is rationally based on the witness's perception. FRE 702. <i>See, e.g. Medforms, Inc. v. Healthcare Management Solutions, Inc.</i>, 290 F.3d 98, 110–11 (2d Cir.2002) (permitted testimony of computer programmer regarding terms contained in copyright registration "based on his everyday experience as a computer programmer and specifically on his work on [the copyrighted software].").</p> <p>Reiche's statement as to what he communicated to GOG is obviously within his personal knowledge and based on his own perception rather than technical knowledge.</p> <p>Moreover, Reiche's testimony, as the creator of Star Control I and II, is sufficient to demonstrate his personal knowledge as to the scope of the copyrights he and Fred own and such testimony is rationally based on Reiche's perception. The copyright registrations themselves are attached to the Reiche Decl. as Exhibits 3-4.</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26	18. “On January 2, 2012, we entered into an agreement with GOG to provide it with a non-exclusive license to distribute the Classic Star Control Games . . .”  Reiche Decl., p. 8, ¶ 37, lines 19-21	<u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement that he agreed to a nonexclusive license with GOG to distribute the Classic Star Control Games.  <u>FRE 1002</u> Additionally, the declarant has failed to include the documents required by the “best evidence” rule to prove that the alleged non-exclusive license took place.	FRE 901 concerns the authentication of “an <i>item</i> of evidence” (e.g. documentary evidence) and is thus inapplicable to witness testimony. FRE 901 (emphasis added). Regardless, Reiche’s own personal knowledge is the foundation for this statement and Stardock has not objected that the statement lacks personal knowledge.  Under FRE 1002, “[a]pplication of the rule requires a resolution of the question whether contents are sought to be proved. Thus an event may be proved by nondocumentary evidence, even though a written record of it was made. If, however, the event is sought to be proved by the written record, the rule applies. For example, payment may be proved without producing the written receipt which was given. Earnings may be proved without producing books of account in which they are entered.” FRE 1002 Committee Notes, citing McCormick §198; 4 Wigmore §1245. Reiche’s testimony as to the fact that he and Fred entered into an agreement with GOG does not require documentary evidence as Reiche’s statement does not speak to the <i>content</i> of the agreement, just that one existed.
27 28	19. “I understand that around January 2013, Atari filed for	<u>FRE 602</u> <u>FRE 701</u>	FRE 901 concerns the authentication of “an <i>item</i> of



<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23</p>	<p>bankruptcy and put its assets up for auction, including the “Star Control Franchise” consisting of some rights to “Star Control 3” but no rights to the <i>Star Control I and II</i> games that Fred and I create and for which we own the copyrights.”</p> <p>Reiche Decl., p. 8, ¶ 38, lines 23-26</p>	<p>The declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as to what rights may or may not have been included in Atari’s bankruptcy, and whether or not the declarant owns any relevant copyrights. As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702.</p> <p><u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement.</p> <p><u>Speculation</u> The declarant is speculating as to the details of Atari’s bankruptcy, as evidenced by the statement “I understand that around January 2013 . . .”</p>	<p>evidence” (e.g. documentary evidence) and is thus inapplicable to witness testimony. FRE 901 (emphasis added). Regardless, Reiche’s own personal knowledge is the foundation for this statement.</p> <p>Under FRE 602, “[e]vidence to prove personal knowledge may consist of the witness’s own testimony.” Under FRE 701, a witness may testify as to an opinion that is rationally based on the witness’s perception. FRE 702. <i>See, e.g. Medforms, Inc. v. Healthcare Management Solutions, Inc.</i>, 290 F.3d 98, 110–11 (2d Cir.2002) (permitted testimony of computer programmer regarding terms contained in copyright registration “based on his everyday experience as a computer programmer and specifically on his work on [the copyrighted software].”).</p> <p>Reiche’s testimony as to what he understands with regard to the Atari bankruptcy is sufficient to demonstrate his personal knowledge thereof and such testimony is rationally based on Reiche’s perception.</p>
<p>24 25 26 27 28</p>	<p>20. “U.S. Copyright Registration No. PA 799-000 for Star Control 3 . . . could not have included rights to ‘characters, names, likenesses, characteristics, and other intellectual property rights pertaining to Star Control I and</p>	<p><u>FRE 602</u> <u>FRE 701</u> The declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide</p>	<p>Under FRE 602, “[e]vidence to prove personal knowledge may consist of the witness’s own testimony.” Under FRE 701, a witness may testify as to an opinion that is rationally based on the witness’s perception. FRE 702. <i>See,</i></p>



	<p>Star Control II in which Reiche has an ownership interest' that we licensed to Accolade under Addendum No. 2 to the 1988 License Agreement.”</p> <p>Reiche Decl., ¶ 39, p. 8 lines 27-28 to p. 9 lines 1-4.</p>	<p>opinion as to what a copyright registration may include, and whether or not the declarant owns any relevant copyrights. As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702.</p> <p><u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement.</p>	<p><i>e.g. Medforms, Inc. v. Healthcare Management Solutions, Inc.</i>, 290 F.3d 98, 110–11 (2d Cir.2002) (permitted testimony of computer programmer regarding terms contained in copyright registration “based on his everyday experience as a computer programmer and specifically on his work on [the copyrighted software].”).</p> <p>Reiche’s testimony, as the creator of Star Control I and II, is sufficient to demonstrate his personal knowledge as to the scope of the copyrights he and Fred own and such testimony is rationally based on Reiche’s perception. Moreover, the copyright registrations themselves are attached to the Reiche Decl. as Exhibits 3-4.</p> <p>FRE 901 concerns the authentication of “an <i>item</i> of evidence” (e.g. documentary evidence) and is thus inapplicable to witness testimony. FRE 901 (emphasis added). Regardless, Reiche’s own personal knowledge is the foundation for this statement.</p>
21.	<p>“Stardock now claims it also bought exclusive publishing rights to Fred’s and my <i>Star Control I and II</i> games under the 1988 License Agreement. This is not possible for at least three reasons. First, the 1988 License Agreement expired by 2001, when Accolade ceased</p>	<p><u>FRE 602</u> <u>FRE 701</u> The declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as to the transfer</p>	<p>Under FRE 602, “[e]vidence to prove personal knowledge may consist of the witness’s own testimony.” Under FRE 701, a witness may testify as to an opinion that is rationally based on the witness’s perception. FRE 702. <i>See, e.g. Medforms, Inc. v.</i></p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	<p>selling the games and paying royalties to me. Second, even if it had not expired in 2001, under the 1988 License Agreement, all rights to our games would have reverted to me when the Atari bankruptcy took more than 90 days to be terminated. Third, the 1988 License Agreement could not be assigned without my consent, and Atari and Stardock never asked for nor received such consent from me.”</p> <p>Reiche Decl., p. 9, ¶ 40, lines 5-12</p>	<p>of publishing rights as a result of Atari’s bankruptcy, whether or not the declarant owns any of the relevant copyrights, and as to whether the 1988 License Agreement could be assigned without his consent. As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702.</p> <p><u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement.</p>	<p><i>Healthcare Management Solutions, Inc.</i>, 290 F.3d 98, 110–11 (2d Cir.2002) (permitted testimony of computer programmer regarding terms contained in copyright registration “based on his everyday experience as a computer programmer and specifically on his work on [the copyrighted software].”).</p> <p>Reiche’s testimony, as the creator of Star Control I and II, is sufficient to demonstrate his personal knowledge as to the scope of the copyrights he and Fred own and such testimony is rationally based on Reiche’s perception. Moreover, the copyright registrations themselves are attached to the Reiche Decl. as Exhibits 3-4.</p> <p>FRE 901 concerns the authentication of “an <i>item</i> of evidence” (e.g. documentary evidence) and is thus inapplicable to witness testimony. FRE 901 (emphasis added). Regardless, Reiche’s own personal knowledge is the foundation for this statement.</p>
22 23 24 25 26 27 28	<p>22. “Fred and I hold the copyrights to Star Control I and II personally . . . We also hold the use of those copyrights in Star Control II, but do not have any ownership of the new material in that product.”</p> <p>Reiche Decl., p. 10, ¶ 43, lines 2-4</p>	<p><u>FRE 602</u> <u>FRE 701</u> The declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as to copyright ownership. As a result, his opinions constitute</p>	<p>Under FRE 602, “[e]vidence to prove personal knowledge may consist of the witness’s own testimony.” Under FRE 701, a witness may testify as to an opinion that is rationally based on the witness’s perception. FRE 702. <i>See, e.g. Medforms, Inc. v. Healthcare Management Solutions, Inc.</i>, 290 F.3d 98,</p>

1		improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702	110–11 (2d Cir.2002) (permitted testimony of computer programmer regarding terms contained in copyright registration “based on his everyday experience as a computer programmer and specifically on his work on [the copyrighted software].”).
2			Reiche’s testimony, as the creator of Star Control I and II, is sufficient to demonstrate his personal knowledge as to the scope of the copyrights he and Fred own and such testimony is rationally based on Reiche’s perception. Moreover, the copyright registrations themselves are attached to the Reiche Decl. as Exhibits 3-4.
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14	23.	“Wardell admitted that ‘Atari doesn’t actually own the copyright on Star Control 1/2 so it’s not like one could make a Star Control 2 HD or what have you without a license from Paul Reiche.’”	FRE 901 concerns the authentication of “an <i>item</i> of evidence” (e.g. documentary evidence) and is thus inapplicable to witness testimony. FRE 901 (emphasis added). Regardless, Reiche’s own personal knowledge is the foundation for this statement and Stardock has not objected that the statement lacks personal knowledge.
15		Reiche Decl., p. 10, ¶ 44, lines 7-9	
16		<u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement, nor even identified the source of this alleged statement.	
17		<u>FRE 106</u> Furthermore, this isolated statement is only a portion of a larger conversation that the declarant should have included to provide necessary context.	FRE 106 simply allows a party to introduce additional evidence that may be considered in conjunction with a piece of offered evidence. FRE 106 is <i>not</i> a grounds for exclusion of evidence.
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1	24.	Seemingly in response to Fred’s and my announcement and refusal to license our content . . . Stardock began selling the Classic Star Control Games through Steam . . . without permission from us and in violation of our copyrights.	<u>FRE 602</u> <u>FRE 701</u> The declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as not the declarant owns any of the relevant copyrights, and as to whether the 1988 License Agreement could be assigned without his consent. As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702.	Under FRE 602, “[e]vidence to prove personal knowledge may consist of the witness’s own testimony.” Under FRE 701, a witness may testify as to an opinion that is rationally based on the witness’s perception. FRE 702. <i>See,</i> <i>e.g. Medforms, Inc. v.</i> <i>Healthcare Management</i> <i>Solutions, Inc.</i> , 290 F.3d 98, 110–11 (2d Cir.2002) (permitted testimony of computer programmer regarding terms contained in copyright registration “based on his everyday experience as a computer programmer and specifically on his work on [the copyrighted software].”).
2		Reiche Decl., p. 12, ¶ 63, lines 19-24	<u>Speculation</u> Furthermore, the declarant is speculating as to Stardock’s intentions behind selling the Classic Star Control Games through steam.	Reiche’s testimony, as the creator of Star Control I and II, is sufficient to demonstrate his personal knowledge as to the scope of the copyrights he and Fred own and such testimony is rationally based on Reiche’s perception. Moreover, the copyright registrations themselves are attached to the Reiche Decl. as Exhibits 3-4.
3			<u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement or authenticate the alleged screenshot of Stardock’s website.	FRE 901 concerns the authentication of “an <i>item</i> of evidence” (e.g. documentary evidence) and is thus inapplicable to witness testimony. FRE 901 (emphasis added). Regardless, Reiche’s own personal knowledge is the foundation for this statement.
4				Reiche’s testimony is sufficient to demonstrate his

1			personal knowledge that
2			Stardock began selling the
3			games that Reiche and Ford
4			created and own without their
5	25. “In late 2017, Fred and I sent	<u>FRE 602</u>	Under FRE 602, “[e]vidence
6	Valve a DMCA notice notifying	<u>FRE 701</u>	to prove personal knowledge
7	them of our copyrights . . .”	The declarant lacks the	may consist of the witness’s
8	Reiche Decl., p. 13, ¶ 64, lines	personal knowledge	own testimony.” Under FRE
9	19-20	necessary to make this	701, a witness may testify as
10		statement, as he does not	to an opinion that is rationally
11		have the expertise	based on the witness’s
12		necessary to provide	perception. FRE 702. <i>See,</i>
13		opinion as to whether or	<i>e.g. Medforms, Inc. v.</i>
14		not the declarant owns	<i>Healthcare Management</i>
15		any of the relevant	<i>Solutions, Inc.</i> , 290 F.3d 98,
16		copyrights. As a result,	110–11 (2d Cir.2002)
17		his opinions constitute	(permitted testimony of
18		improper lay witness	computer programmer
19		testimony that	regarding terms contained in
20		encompasses technical	copyright registration “based
21		and/or specialized	on his everyday experience as
22		knowledge exclusively	a computer programmer and
23		within the scope of FRE	specifically on his work on
24		702.	[the copyrighted software].”).
25		<u>FRE 1002</u>	Reiche’s statement as to
26		Additionally, the	Reiche and Ford sending a
27		declarant has failed to	DMCA notice to Valve is
28		include the documents	obviously within his personal
		required by the “best	knowledge and based on his
		evidence” rule to	own perception rather than
		demonstrate the date and	technical knowledge.
		content of the Valve	Moreover, Reiche’s
		DMCA.	testimony, as the creator of
			Star Control I and II, is
			sufficient to demonstrate his
			personal knowledge as to the
			scope of the copyrights he
			and Fred own and such
			testimony is rationally based
			on Reiche’s perception. The
			copyright registrations
			themselves are attached to the
			Reiche Decl. as Exhibits 3-4.

1			Under FRE 1002,
2			“[a]pplication of the rule
3			requires a resolution of the
4			question whether contents are
5			sought to be proved. Thus an
6			event may be proved by
7			nondocumentary evidence,
8			even though a written record
9			of it was made. If, however,
10			the event is sought to be
11			proved by the written record,
12			the rule applies. For example,
13			payment may be proved
14			without producing the written
15			receipt which was given.
16			Earnings may be proved
17			without producing books of
18			account in which they are
19			entered.” FRE 1002
20			Committee Notes, citing
21			McCormick §198; 4
22			Wigmore §1245. Reiche’s
23			testimony as to the fact that
24			he and Ford sent a DMCA
25			notice does not require
26			documentary evidence as
27			Reiche’s statement does not
28			speak to the <i>content</i> of the
			DMCA notice, just that it was
			sent.
19	26. “Last fall, Stardock also began	<u>FRE 602</u>	Under FRE 602, “[e]vidence
20	taking preorders for its	<u>FRE 701</u>	to prove personal knowledge
21	forthcoming <i>Origins</i> game . . .	The declarant lacks the	may consist of the witness’s
22	and began releasing information	personal knowledge	own testimony.” Under FRE
23	about the game that suggests it	necessary to make this	701, a witness may testify as
24	will infringe our copyrights to	statement, as he does not	to an opinion that is rationally
25	the <i>Star Control I and II</i>	have the expertise	based on the witness’s
26	games.”	necessary to provide	perception. FRE 702. <i>See,</i>
27	Reiche Decl., p. 13, ¶ 65, lines	opinion as to whether	<i>e.g. Medforms, Inc. v.</i>
28	23-25	Stardock’s game will	<i>Healthcare Management</i>
		infringe any copyrights.	<i>Solutions, Inc.</i> , 290 F.3d 98,
		As a result, his opinions	110–11 (2d Cir.2002)
		constitute improper lay	(permitted testimony of
		witness testimony that	computer programmer
		encompasses technical	regarding terms contained in
		and/or specialized	copyright registration “based

1		knowledge exclusively within the scope of FRE 702.	on his everyday experience as a computer programmer and specifically on his work on [the copyrighted software].”).
2			
3			
4		<u>FRE 901</u>	Reiche’s testimony, as the creator of Star Control I and II, is sufficient to demonstrate his personal knowledge as to the scope of the copyrights he and Fred own and such testimony is rationally based on Reiche’s perception. Moreover, the copyright registrations themselves are attached to the Reiche Decl. as Exhibits 3-4.
5		The declarant has failed to provide the foundation required to support his statement or authenticate the alleged screenshot of Stardock’s website	
6			
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12			Under FRE 901, a document may be authenticated by the testimony of a witness with knowledge. Reiche’s testimony is sufficient to authenticate the screenshot of Stardock’s website.
13			
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16	27.	“From the publicly released videos . . .”	
17		Reiche Decl., p. 14, ¶ 66, line 3	
18			
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20			
21	28.	“On May 11, 2018, Wardell stated on Stardock’s website that contrary to his prior statements, “[f]uture Star Control games will have the classic Star Control aliens in them . . . Only the most unreasonable person would argue that Star [] control games can’t have Star Control aliens simply because an independent contractor of Accolade’s claims rights to names he may or may	
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		<u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement, or even identified the videos to which he is referring.	Reiche need not authenticate a video which Reiche and Ford have not offered into evidence.
		<u>FRE 901</u> The declarant has failed to authenticate the alleged screenshot of Stardock’s website, attached as Exhibit 13.	Under FRE 901, a document may be authenticated by the testimony of a witness with knowledge. Reiche’s testimony is sufficient to authenticate the screenshot of Stardock’s website.
		<u>FRE 106</u> Furthermore, this isolated statement is only a portion of a larger text that the declarant should	FRE 106 simply allows a party to introduce additional evidence that may be considered in conjunction with a piece of offered



1	not of [sic?] randomly generated	have included to provide	evidence. FRE 106. FRE 106
2	28 years ago. A screenshot of	necessary context.	is <b>not</b> a grounds for exclusion
3	Stardock's online		of evidence. <i>Id.</i>
4	forum containing this statement		
5	is attached as Exhibit 13.”		
	Reiche Decl., p. 14, ¶ 66, line 3		
6	29. “Later in May 2018, Wardell	<u>FRE 602</u>	Under FRE 602, “[e]vidence
7	conducted an informal survey or	<u>FRE 901</u>	to prove personal knowledge
8	vote among potential purchasers	The declarant lacks the	may consist of the witness's
9	of Origins of which aliens to	personal knowledge	own testimony.” Reiche's
10	include from <i>Star Control I and</i>	necessary to make this	testimony is sufficient to
11	<i>II</i> . At the end of the vote, he	statement, and has failed	demonstrate his personal
12	announced that several alien	to provide the foundation	knowledge of the events he
13	racers from <i>Star Control I and II</i>	required.	describes.
14	will also be in <i>Origins</i> , and that	<u>FRE 1002</u>	FRE 901 concerns the
15	they will play the same roles as	Furthermore, the	authentication of “an <i>item</i> of
16	in the original	declarant has failed to	evidence” (e.g. documentary
17	game. . .	include the documents	evidence) and is thus
18	Reiche Decl., p. 15, ¶ 70, lines	required by the “best	inapplicable to witness
19	7-11	evidence” rule to	testimony. FRE 901
20		demonstrate the accuracy	(emphasis added).
21		of Wardell's alleged	FRE 106 simply allows a
22		comments and the results	party to introduce additional
23		of the alleged survey.	evidence that may be
24		<u>FRE 106</u>	considered in conjunction
25		Finally, this isolated	with a piece of offered
26		statement is only a	evidence. FRE 106. FRE 106
27		portion of a larger text	is <b>not</b> a grounds for exclusion
28		that the declarant should	of evidence. <i>Id.</i>
		have included to provide	
		necessary context.	
22	30. “In July 2018, Wardell	<u>FRE 901</u>	FRE 901 concerns the
23	confirmed that the Arilou will	The declarant has failed	authentication of “an <i>item</i> of
24	appear in <i>Origins</i> , and revealed	to provide the foundation	evidence” (e.g. documentary
25	that <i>Origins</i> will include other	required to support his	evidence) and is thus
26	aliens from <i>Star Control I and II</i>	statement or to even	inapplicable to witness
27	called the Chenjesu and	indicate the source of	testimony. FRE 901
28	Melnorme.”	this alleged statement.”	(emphasis added).
	Reiche Decl., p. 15, ¶ 71, lines		Regardless, Reiche's own
	12-14		personal knowledge is the
			foundation for this statement
			and Stardock has not objected

			that the statement lacks personal knowledge.
31.	<p>“On August 13, 2018, Wardell stated that ‘Stardock owns the Star Control aliens. Paul and Fred *might* have copyrights to how those aliens were expressed in Star Control II but that’s the extent of it . . . Stardock will utilize the Star Control aliens as it sees fit.’ A screenshot of the UQM forum containing this post is attached hereto as Exhibit 14</p> <p>Reiche Decl., p. 15, ¶ 72, lines 15-18</p>	<p><u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement, or to authenticate the alleged screenshot of the UQM forum post, attached as Exhibit 14.</p> <p><u>FRE 106</u> Furthermore, this isolated statement is only a portion of a larger text that the declarant should have included to provide necessary context.</p>	<p>Under FRE 901, a document may be authenticated by the testimony of a witness with knowledge. Reiche’s testimony is sufficient to authenticate the screenshot of the UQM forum post.</p> <p>FRE 106 simply allows a party to introduce additional evidence that may be considered in conjunction with a piece of offered evidence. FRE 106 is <i>not</i> a grounds for exclusion of evidence.</p>
32.	<p>“On August 14, 2018, Wardell admitted that ‘We expect players to assume that the Arilou species [in Star Control; Origins] is related to the Arilou species in SC2 [<i>Star Control II</i>].’ A screenshot of the UQM forum containing this post is attached hereto as Exhibit 15.”</p> <p>Reiche Decl., p. 15, ¶ 73, lines 19-21</p>	<p><u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement, or to authenticate the alleged screenshot of the UQM forum post, attached as Exhibit 15.</p> <p><u>FRE 106</u> Furthermore, this isolated statement is only a portion of a larger text that the declarant should have included to provide necessary context.</p>	<p>Under FRE 901, a document may be authenticated by the testimony of a witness with knowledge. Reiche’s testimony is sufficient to authenticate the screenshot of the UQM forum post.</p> <p>FRE 106 simply allows a party to introduce additional evidence that may be considered in conjunction with a piece of offered evidence. FRE 106 is <i>not</i> a grounds for exclusion of evidence.</p>
33.	<p>“. . . appearing to confirm our suspicion that Stardock will ultimately seek to stop us from using our own characters in our sequel. A screenshot of Stardock’s online forum containing this statement is attached as Exhibit 16.”</p>	<p><u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement, or to authenticate the alleged screenshot of the UQM forum post, attached as Exhibit 16.</p>	<p>Under FRE 901, a document may be authenticated by the testimony of a witness with knowledge. Reiche’s testimony is sufficient to authenticate the screenshot of the UQM forum post.</p>

1	Reiche Decl., p. 15, ¶ 74, lines		
2	24-27	<u>Speculation</u>	
3		Furthermore, the	
4		declarant is speculating	
5		as to Stardock's future	
6		intentions regarding its	
7		intellectual property.	
8	34. "Stardock has also used on its	<u>FRE 901</u>	Under FRE 901, a document
9	website images of aliens that are	The declarant has failed	may be authenticated by the
10	substantially similar to and/or	to provide the foundation	testimony of a witness with
11	derived from aliens from <i>Star</i>	required to support his	knowledge. Reiche's
12	<i>Control I and II</i> , e.g.: [Images	statement, or to	testimony is sufficient to
13	of aliens allegedly from <i>Star</i>	authenticate the alleged	authenticate the screenshots
14	<i>Control I and II</i> and then current	screenshot of aliens from	of the aliens from Stardock's
15	aliens allegedly from Stardock's	Star Control I and II or	website.
16	Website]	from Stardock's website.	
17	Reiche Decl., p. 16, ¶ 75, lines	<u>FRE 602</u>	Under FRE 602, "[e]vidence
18	1-16	<u>FRE 701</u>	to prove personal knowledge
19		Furthermore, the	may consist of the witness's
20		declarant lacks the	own testimony." Under FRE
21		personal knowledge	701, a witness may testify as
22		necessary to make this	to an opinion that is rationally
23		statement, as he does not	based on the witness's
24		have the expertise	perception. FRE 702. <i>See,</i>
25		necessary to provide	e.g. <i>Medforms, Inc. v.</i>
26		opinion as to whether	<i>Healthcare Management</i>
27		aliens in Stardock are	<i>Solutions, Inc.</i> , 290 F.3d 98,
28		"substantially similar to	110–11 (2d Cir.2002)
		and/or derived from	(permitted testimony of
		aliens from <i>Star Control</i>	computer programmer
		<i>I and II</i> ." As a result, his	regarding terms contained in
		opinions constitute	copyright registration "based
		improper lay witness	on his everyday experience as
		testimony that	a computer programmer and
		encompasses technical	specifically on his work on
		and/or specialized	[the copyrighted software].").
		knowledge exclusively	
		within the scope of FRE	Reiche's testimony, as the
		702.	creator of <i>Star Control I and</i>
			<i>II</i> , is sufficient to demonstrate
			his personal knowledge
			thereof and his testimony that
			the aliens on Stardock's
			website are substantially
			similar is rationally based on
			his own perception.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	<p>35. “. . . given all of the above, [Origins] seems likely to infringe our copyrights.”</p> <p>Reiche Decl., p. 16, ¶ 76, lines 17-20</p>	<p><u>FRE 602</u> <u>FRE 701</u> Furthermore, the declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as to whether Origins will infringe on any copyrights. As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702.</p> <p><u>Speculation</u> Furthermore, the declarant is speculating as to whether a game that he has not yet seen will infringe on a copyright he allegedly owns.</p>	<p>Under FRE 602, “[e]vidence to prove personal knowledge may consist of the witness’s own testimony.” Under FRE 701, a witness may testify as to an opinion that is rationally based on the witness’s perception. FRE 702. <i>See, e.g. Medforms, Inc. v. Healthcare Management Solutions, Inc.</i>, 290 F.3d 98, 110–11 (2d Cir.2002) (permitted testimony of computer programmer regarding terms contained in copyright registration “based on his everyday experience as a computer programmer and specifically on his work on [the copyrighted software].”).</p> <p>Reiche’s testimony, as the creator of Star Control I and II, is sufficient to demonstrate his personal knowledge of the games as well as his copyrights therein, and his testimony that Origins <i>seems</i> to infringe is rationally based on his own perception.</p>
19 20 21 22 23 24 25 26 27 28	<p>36. “. . . Stardock released two content packs consisting of names, images, and descriptions of characters in <i>Origins</i> that are substantially similar to and/or derived from characters from . . . <i>Star Control I and II</i> . . .”</p> <p>Reiche Decl., p. 16, ¶ 77, lines 21-24</p>	<p><u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement.</p> <p><u>FRE 602</u> <u>FRE 701</u> Furthermore, the declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as to whether</p>	<p>Under FRE 901, a document may be authenticated by the testimony of a witness with knowledge. Reiche’s testimony is sufficient to authenticate the screenshots of the aliens from Stardock’s content pack.</p> <p>Under FRE 602, “[e]vidence to prove personal knowledge may consist of the witness’s own testimony.” Under FRE 701, a witness may testify as to an opinion that is rationally based on the witness’s</p>

1		characters in <i>Origins</i> are “substantially similar to and/or derived from characters . . . from <i>Star Control I and II</i> .” As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702.	perception. FRE 702. <i>See, e.g. Medforms, Inc. v. Healthcare Management Solutions, Inc.</i> , 290 F.3d 98, 110–11 (2d Cir.2002) (permitted testimony of computer programmer regarding terms contained in copyright registration “based on his everyday experience as a computer programmer and specifically on his work on [the copyrighted software].”).
2			Reiche’s testimony, as the creator of <i>Star Control I and II</i> , is sufficient to demonstrate his personal knowledge thereof and his testimony that the aliens in Stardock’s content packs are substantially similar is rationally based on his own perception.
3	37.	“ . . . Wardell admitted that <i>Origins</i> includes characters called the Arilou who are from <i>Star Control I and II</i> . Besides the identical names, below is a comparison of images of the Arilou from <i>Star Control I and II</i> and from the <i>Origins</i> content pack:” [Images of aliens allegedly from <i>Star Control I and II</i> and then current aliens allegedly from <i>Origins</i> ]	<u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement, or to authenticate the alleged screenshot of aliens from <i>Star Control I and II</i> or from the <i>Origins</i> content pack
4		Reiche Decl., ¶ 78, p. 16 lines 25-27 to p. 17 lines 1-22.	Under FRE 901, a document may be authenticated by the testimony of a witness with knowledge. Reiche’s testimony is sufficient to authenticate the screenshots of the aliens from Stardock’s content pack.
5	38.	“Stardock’s website and content pack describe the Arilou in <i>Origins</i> as a ‘race of green-skinned aliens who admit to having been watching the	<u>FRE 1002</u> The declarant has failed to include the documents required by the “best
6			Under FRE 1002, “[a]pplication of the rule requires a resolution of the question whether contents are sought to be proved. Thus an

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	human race for a long time,’ and as ‘little green men.’ Calling themselves the Arilou Lalee’lay, they have apparently been watching humanity for a long time . . . they also seem to be almost purposefully mysterious.’ Similarly, the Arilou are described in <i>Star Control II</i> as ‘[t]he Ariloulaleelay are a mysterious race . . . they do make regular, secret visits to your world, and have done so for centuries.’ The <i>Star Control II</i> manual further describes the Arilou as ‘pale, about 1.5 meters tall, and have large, childlike heads with dark, soulful eyes . . . The Arilou may have visited Earth often in the past . . .”	evidence” rule to demonstrate the accuracy of the alleged descriptions	event may be proved by nondocumentary evidence, even though a written record of it was made. If, however, the event is sought to be proved by the written record, the rule applies. For example, payment may be proved without producing the written receipt which was given. Earnings may be proved without producing books of account in which they are entered.” FRE 1002 Committee Notes, citing McCormick §198; 4 Wigmore §1245. Reiche’s testimony as to what he viewed on Stardock’s website is sufficient.
16 17 18 19 20 21 22 23	39. “. . . Wardell admitted that <i>Origins</i> includes characters . . . from <i>Star Control I and II</i> . Besides the identical names, below is a comparison of images of the Chenjesu from <i>Star Control</i> and from the <i>Origins</i> content pack.” [Images of Chenjesu allegedly from <i>Star Control I and II</i> and then from <i>Origins</i> ]	<u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement, or to authenticate the alleged screenshot of aliens from <i>Star Control I and II</i> or from <i>Origins</i> .	Under FRE 901, a document may be authenticated by the testimony of a witness with knowledge. Reiche’s testimony is sufficient to authenticate the screenshots of the aliens from Stardock’s content pack.
24 25 26 27 28	40. “Stardock’s website and content pack describe the Chenjesu as ‘ambulatory crystals themselves, who fed on a unique mixture of solar and chemical processes. Peaceful and very intelligent’ and living on a	<u>FRE 1002</u> The declarant has failed to include the documents required by the “best evidence” rule to demonstrate the accuracy	Under FRE 1002, “[a]pplication of the rule requires a resolution of the question whether contents are sought to be proved. Thus an event may be proved by nondocumentary evidence,



1	‘strange crystalline world . . .’	of the alleged	even though a written record
2	Similarly, the Chenjesu were	descriptions.	of it was made. If, however,
3	described in <i>Star Control</i> as		the event is sought to be
4	‘[c]rystalline in substance,		proved by the written record,
5	existing on electric energy,’ and		the rule applies. For example,
6	later described in <i>Star Control II</i>		payment may be proved
7	as having ‘fantastic intellects,’		without producing the written
8	and being ‘peaceful,’ and being		receipt which was given.
9	‘a photo/chemovore (it derives		Earnings may be proved
10	its nourishment from light and		without producing books of
11	ambient minerals).’”		account in which they are
	Reiche Decl., p. 19, ¶ 81, lines		entered.” FRE 1002
	1-7		Committee Notes, citing
			McCormick §198; 4
			Wigmore §1245. Reiche’s
			testimony as to what he
			viewed on Stardock’s website
			is sufficient.
12	41. “In addition to the content	<u>FRE 901</u>	Under FRE 901, a document
13	packs, Stardock also released a	The declarant has failed	may be authenticated by the
14	beta version of <i>Origins</i> that . . .	to provide the foundation	testimony of a witness with
15	is substantially similar to and/or	required to support his	knowledge. Reiche’s
16	derived from the Super Melee	statement, or to	testimony is sufficient to
17	part of <i>Star Control II</i> in terms	authenticate the alleged	authenticate the screenshots
18	of the layout, user interface,	screenshot of	of the comparative material
19	functionality, and user	comparative material	from Star Control I and II and
20	experience . . . Various	from Star Control I and	from Origins.
21	customers who preordered	II or from <i>Origins</i> .	
22	<i>Origins</i> and had the opportunity	Furthermore, defendant	Under FRE 602, “[e]vidence
23	to test another beta version of	has not identified any of	to prove personal knowledge
24	the game . . . have also posted	the customers that	may consist of the witness’s
25	videos of additional content that	supposedly posted videos	own testimony.” Under FRE
26	suggests the version of the game	of content indicating that	701, a witness may testify as
27	to be released on September 20	<i>Origins</i> is similar to Star	to an opinion that is rationally
28	will be substantially similar to	Control I and II, nor has	based on the witness’s
	and/or derived from <i>Star</i>	the declarant identified	perception. FRE 702. <i>See,</i>
	<i>Control II</i> . Below are pictures of	the videos themselves	<i>e.g. Medforms, Inc. v.</i>
	material from <i>Star Control II</i> as	that allegedly contain	<i>Healthcare Management</i>
	compared to material from Fleet	these materials.	<i>Solutions, Inc.</i> , 290 F.3d 98,
	Battles beta and other materials		110–11 (2d Cir.2002)
	from <i>Origins</i> that we found	<u>FRE 602</u>	(permitted testimony of
	online.” [Images of materials	<u>FRE 701</u>	computer programmer
	allegedly from Star Control I	Furthermore, the	regarding terms contained in
	and II and then from <i>Origins</i> ]	declarant lacks the	copyright registration “based
		personal knowledge	on his everyday experience as
		necessary to make this	a computer programmer and



1	Reiche Decl., ¶ 82, p. 19 lines 8-26 to p. 20 lines 1-28	statement, as he does not have the expertise necessary to provide opinion as to whether material in <i>Origins</i> is “substantially similar to and/or derived from . . . from <i>Star Control I and II</i> .” As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702	specifically on his work on [the copyrighted software].”).  Reiche’s testimony, as the creator of <i>Star Control I and II</i> , is sufficient to demonstrate his personal knowledge of the content of <i>Star Control I and II</i> and his testimony that the material in what he’s seen of <i>Origins</i> to date is substantially similar is rationally based on his own perception.
11	42. “Moreover, the <i>Origins</i> Fleet Battles beta includes a ship-creator tool that allows players to easily create ships from <i>Star Control I and II</i> , which they can then share and Stardock then offers and distributes to purchasers of the game . . .”  Reiche Decl., p. 21, ¶ 83, lines 1-3	<u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement.	FRE 901 concerns the authentication of “an <i>item</i> of evidence” (e.g. documentary evidence) and is thus inapplicable to witness testimony. FRE 901 (emphasis added). Regardless, Reiche’s own personal knowledge is the foundation for this statement and Stardock has not objected that the statement lacks personal knowledge.
19	43. “There are numerous examples of ships that look substantially similar to ships from <i>Star Control I and II</i> , and in some cases bear the exact same or a substantially similar name as well. Below are some examples:” [Images of ships allegedly from <i>Star Control I and II</i> and then from <i>Origins</i> ]  Reiche Decl., ¶ 84, p. 21 lines 10 – p. 26, line 25	<u>FRE 602</u> <u>FRE 901</u> The declarant lacks the personal knowledge necessary to make this statement, has failed to provide the foundation required, and to authenticate the alleged screenshot of comparative ships from <i>Star Control I and II</i> or from <i>Origins</i>	Under FRE 901, a document may be authenticated by the testimony of a witness with knowledge. Reiche’s testimony is sufficient to authenticate the screenshots of the comparative material from <i>Star Control I and II</i> and from <i>Origins</i> .  Under FRE 602, “[e]vidence to prove personal knowledge may consist of the witness’s own testimony.” Under FRE 701, a witness may testify as

1			to an opinion that is rationally based on the witness's perception. FRE 702. <i>See, e.g. Medforms, Inc. v. Healthcare Management Solutions, Inc.</i> , 290 F.3d 98, 110–11 (2d Cir.2002) (permitted testimony of computer programmer regarding terms contained in copyright registration "based on his everyday experience as a computer programmer and specifically on his work on [the copyrighted software].").
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11			Reiche's testimony, as the creator of Star Control I and II, is sufficient to demonstrate his personal knowledge of the content of Star Control I and II and his testimony that the material in what he's seen of Origins to date is substantially similar is rationally based on his own perception.
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17	44.	"Given Fred's and my ownership of the copyrights to <i>Star Control I and II</i> , and good faith belief that Stardock's publishing of the aforementioned content infringes on our copyrights, we served DMCA notices on two of the service providers through which Stardock has been selling and distributing this content."	
18		Reiche Decl., ¶ 85, p. 26 line 26 - p. 27, line 1	
19			<u>FRE 602</u>
20			<u>FRE 701</u>
21			Furthermore, the declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as to whether publishing the material would infringe any alleged copyrights. As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively
22			Under FRE 602, "[e]vidence to prove personal knowledge may consist of the witness's own testimony." Under FRE 701, a witness may testify as to an opinion that is rationally based on the witness's perception. FRE 702. <i>See, e.g. Medforms, Inc. v. Healthcare Management Solutions, Inc.</i> , 290 F.3d 98, 110–11 (2d Cir.2002) (permitted testimony of computer programmer regarding terms contained in copyright registration "based on his everyday experience as a computer programmer and
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1		within the scope of FRE 702	specifically on his work on [the copyrighted software].”).
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3			Reiche’s testimony, as the
4			creator of Star Control I and
5			II, is sufficient to demonstrate
6			his personal knowledge of the
7			content of Star Control I and
8			II as well as his copyrights to
9			the content therein, and his
10			testimony that he has a good
11			faith belief that the content
12			infringes his rights is
13			rationaly based on his own
14			perception.
15	45. “I did recently see a video	<u>FRE 602</u>	Under FRE 901, a document
16	posted last week by someone	<u>FRE 901</u>	may be authenticated by the
17	who has had the opportunity to	The declarant lacks the	testimony of a witness with
18	test and review some version of	personal knowledge	knowledge. Reiche’s
19	the game who said that ‘I was	necessary to make this	testimony is sufficient to
20	impressed by how well <i>Origins</i>	statement, has failed to	authenticate the video link.
21	kept the original feel and style	provide the foundation	
22	of the classic Star Control	required, and to	Under FRE 602, “[e]vidence
23	games of the ‘90s and that it	authenticate the alleged	to prove personal knowledge
24	‘reminded me a lot of playing	video at the provided	may consist of the witness’s
25	Star Control II.’ The video can	link.	own testimony.” Reiche’s
26	be viewed here:		testimony is sufficient to
27	<a href="https://youtu.be/umeaSgfmkVI">https://youtu.be/umeaSgfmkVI</a> .”	<u>FRE 801, 802</u>	demonstrate his personal
28	Reiche Decl., p. 27, ¶ 87, lines	Furthermore, the	knowledge of the video.
	10-14	statements allegedly	
		made by the unknown	The statements made in the
		individual are being	video fall into several
		offered for their truth,	exceptions to the hearsay rule
		and as such they are	and are therefore not
		inadmissible hearsay	objectionable. Even if the
		without exception.	statements do not fall into
			one of the below exceptions,
			the statements are not hearsay
			because they are not offered
			for their truth, but for the
			user’s reaction and state of
			mind after playing the
			<i>Origins</i> game. Specifically,
			Reiche and Ford do not offer
			the statements as evidence
			that the <i>Origins</i> game is

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			<p>actually similar, but rather as evidence that user's in the gaming community perceive the game to be similar.</p> <p><u>Present Sense Impression – FRE 803(1):</u> The statements in the video are “present sense impressions” under FRE 803(1), because they describe the user's experience playing the Origins game made immediately after he played it. <i>See</i> FRE 803(1) (“A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.”).</p> <p><u>Then-Existing Mental, Emotional, or Physical Condition – FRE 803(4):</u> The statements in the video are “then-existing mental conditions” because they are statements of the user's then-existing reaction to the Origins game.</p> <p>The statements are likewise admissible under FRE 807.</p>
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